

Consumer Protection Laws – An Appraisal

“Customer is the most important visitor to our premises. He is not an interruption on our work. He is the purpose of it. We are not doing him a favour by serving him. He is doing a favour by giving us an opportunity to do so.” – Mahatma Gandhi



Consumer is the king in the market because it is he who gives value to a product or service, but in the Indian scenario, he is the subject of exploitation. In this context, this article examines the important provisions of consumer protection laws, their effectiveness and the role of professionals.



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Introduction

Consumer is the king in the market, because it is he who gives value to a product or service. Unless the consumer buys a product or service, it has no value and no market. Realising the importance of the consumer, the former US President John F. Kennedy introduced the concept of consumer rights for the first time in the US Congress on 15th March, 1962. Since then, all over the world, every year 15th March is celebrated as the “Consumers Right Day”. In India, 24th December is celebrated as the ‘National Consumer Day’ when the Consumer Protection Bill was passed by both Houses of Parliament and got the President’s assent. In this context, an attempt is made to analyse the effectiveness of important consumer protection laws in India and make a few suggestions for improving their effectiveness.

Consumers’ Rights and Responsibilities

The universal rights of a consumer are:

- Right to safety – to be protected against sale of spurious or hazardous goods and services.
- Right to information – to know the quality, quantity, potency, purity, standard, weight and price of goods

and services being paid for, to prevent unfair trade practices.

- Right to choice – to be assured, whenever possible access to a variety of goods and services at competitive prices.
- Right to be heard – to be heard and be assured that consumers' interest will receive due consideration at appropriate forum.
- Right to seek redressal – to seek legal redressal against unfair or restricted practices or exploitation.
- Right to consumer education – to have access to consumer education.

The responsibilities of consumer are:

- Obtain proper receipt/cash memo for purchases made and guarantee/warranty card duly stamped and signed by the seller, wherever applicable.
- Obtain full information regarding quality, maximum retail price, guarantee, warrantee and after-sale services, before making any purchases.
- Read terms and conditions carefully. There is difference between guarantee and warrantee. In case of guarantee, a consumer has the right to get replacement or money back, if the product or service is defective or deficient. On the other hand, in case of warrantee, the consumer has the right to get the defective parts repaired.
- Be careful, about false and/or misleading advertisement offering discounts and free gifts.
- Purchase goods having quality marks like ISI, Agmark, etc., as and where available for safety and quality.
- Raise voice against defective goods and deficient services and make a complaint to seller/manufacturer/dispute redressal machinery.

Important Consumer Protection Laws

A. The Consumer Protection Act, 1986

The Consumer Protection Act, 1986 is one of the most important milestones in the area of consumer protection movement in the country. The Seminal Act provides for better protection of the interests of consumers in respect of all goods and services, excluding goods for resale or for commercial purposes and services rendered free

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of charge and under a contract for personal services. The Act covers public, private, joint and cooperative sectors. It seeks to redress the grievances of consumer in respect of defective goods, deficiency in services and unfair trade practices in a time bound through three-tier quasi-judicial consumer dispute redressal machinery at the National, State and District levels. The provisions of the Act are compensatory in nature. The Act also provides for setting up of the Consumer Protection Councils at the Centre, State and District levels, to act as advisory bodies for the promotion and protection of Consumer Rights.

Presently, there are 629 District Forums, 35 State Commissions and the National Commission. They have so far disposed about 32 lakh cases, with a disposal rate of 90%. National Commission has also started holding Circuit Bench sittings in different parts of the country.

The consumer can approach Consumer Disputes Redressal Forum against sale of defective goods or deficient services or adoption of unfair or restrictive trade practices. The jurisdiction of Consumer Forum depends upon the cost of the goods or services or the compensation asked for where the cause of action arose or where the opposite party works or resides.

The Consumer Protection Act provides for a three-tier structure like civil courts. At the lowest level is the Consumer Disputes Redressal Forum, dealing with complaints for less than ₹20 lakh. At the middle level, there is State Commission dealing with complaints for ₹20 lakh up to ₹1 crore and also hear appeals against the orders of the Forums. The National Consumer Disputes Redressal Commission deals with cases for more than ₹1 crore and hears appeals against the orders of the State Commission. These bodies are manned by judges.

The Consumer Protection Act mandates settlement of all cases within 90 to 150 days and award of punitive damages in appropriate circumstances.

B. Competition Act, 2002

The Competition Act, 2002, aims at promoting and sustaining free and fair market practices by restricting anti-competitive agreements and abuse of dominance across various sectors. The Act provides for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers.

Competition is the key for better quality, wider choices and fair prices. The Competition Commission

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of India (CCI), simply stated, deals with the following anti-competitive agreements and business practices:

- fixing prices to avoid competition;
- limiting production and/or supply or distort competition;
- allocating markets to minimise competition;
- bid rigging or collusive bidding;
- conditional purchase/sale (tie-in arrangement);
- exclusive supply/distribution arrangement;
- resale price maintenance;
- refusal to deal to limit competition;
- abuse of market power.

Any enterprise, consumer, consumer association or trade association can file complaint/information about anti-competitive agreements and business practices before the CCI. The CCI also has the power to examine on its own motion to examine anti-competitive trade practices.

C. Food Safety and Standards Act, 2006

The Food Safety and Standards (FSS) Act, 2006, provides for better and stricter regime to check adulteration of food and beverages. The Central Government has also notified the FSS (Food Product Standards and Food Additives) Regulations, 2011 for the enforcement of the Act.

The main objects of the FSS Act include protecting the public from poisonous and harmful foods; preventing the sale of sub-standard foods; and safeguarding the interests of consumers by eliminating fraudulent practices.

The FSS Act, which came into effect throughout the country on 05-08-2011, has repealed other enactments, namely, the Prevention of Food Adulteration Act, 1954, Fruit Products Order, 1955, Solvent Extracted Oil, De-Oiled Meat and Edible Floor (Control) Order, 1967, Meat Food Products Order, 1973, Edible Oils Packaging, 1998, Vegetable Oil Product Order, 1988, Milk and Milk Product Regulations, 2009.

One of the important provisions of the regulation, provides for labeling and disclosing the names of ingredients along with their percentages in food and

soft drinks. Section 24 of the Act puts restriction, on misleading or deceiving advertisement and unfair trade practices, promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice or information which –

- a) falsely represents standards, quality, quantity or grade-composition;
- b) makes a false or misleading representation about usefulness; and
- c) gives guarantee of the efficiency without adequate scientific justification thereof.

All persons/manufacturers/dealers/importers of food items, are required to comply with the above provisions of the law while advertising or disseminating information through direct or indirect promotional activity.

The Food Safety and Standards Authority of India (FSSAI) set up under the Act, functions under administrative control of the Ministry of Health and Family Welfare, Government of India. It is a single reference point for all matters relating to food safety and standards, by moving from multi-level, multi departmental control to single line of command. The functions of FSSAI include laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of sale and wholesome food for human consumption.



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The Act provides penalty on manufacturers of adulterated food items including fine of ₹1 lakh to ₹10 lakh, to be adjudicated by an officer of the rank of sub-divisional magistrate. In case of unsafe food, the sentence can extend from six months to seven years' imprisonment, depending on the nature of the offence. In the event of death caused due to adulteration, the maximum punishment will be life term and fine up to ₹10 lakh. The punishment will be doubled in case of subsequent offences.

The Act also provides that government will also pay compensation of ₹5 lakh in case of death, ₹3 lakh in case of grievous injury and ₹1 lakh in case of minor injury.

In case of sub-standard, misbranded food or misleading advertisement about food products (not injurious to health) the cases will not go to the court. The offenders would, however, be fined up to ₹10 lakh.

In case food manufacturing and processing units can be fined up to ₹1 lakh if these do not meet the stipulated standards of hygiene.

Under the Act, all traders in food business will have to register themselves with the Food Department of their respective governments and obtain a licence.

D. The Legal Metrology Act, 2009

The Legal Metrology Act has come into force from March 01, 2009, after repealing the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985. The Government has also notified the Legal Metrology (Approval of Models) Rules, 2011; Legal Metrology (Packaged Commodities) Rules, 2011; and Legal Metrology (General) Rules, 2011. The object of the Act is to prescribe the scientific quality, standards and weights for a wide range of food products.

Present Scenario

Ineffective implementation of the Consumer Protection Act

The Consumer Protection Act, the Magna Carta of consumer rights, which lays down that all cases would

be settled in 90 to 150 days, remains on paper. The official estimates reveal the interesting, but conceals the vital aspect. Out of the cases filed so far, the rate of settlement of cases is 91% in the District Forums, 80% in the State Commission and 97% in the National Commission. However, what is concealed is that, within the mandatory time limit, the settlement of cases was only 46% cases in the Consumer Forum and 38% in the State Commission.

Pending Cases as on 31-12-2010

State	No. of cases pending
Uttar Pradesh	1,12,000
Maharashtra	35,700
Haryana	28,400
Rajasthan	26,800
Gujarat	23,300
Madhya Pradesh	16,800
Bihar	14,600
Delhi	12,800
Orissa	11,900
Punjab	10,600

Worst offenders as on March 2010, 2011

Sector	Percentage
Defective products	21.3
Banking	16.8
Telecom	6.8
LPG	5.4
Legal	4.8
Insurance	4.6
Automobile	2.9
Education	2.7
Public distribution	2.6
Power	2.0

The Consumer Forums, conceived as dedicated and speedier alternative to civil courts, are ineffective due to backlog of cases and there are inadequate judges and staff besides woeful infrastructure. The experience of the functioning of 627 District Forums, 35 State Commissions and the National Commission under the Consumer Protection Act, 1986 is dismal.

The Forums and Commissions have powers of civil courts, but they rarely exercise. As a result, their orders

are routinely ignored by defaulters and consumers face enormous difficulties in implementation of the orders.

The Centre and States blame each other for the ineffective functioning of consumer forums. According to the states, the Consumer Protection Act being the Central Act, the Centre does not provide adequate funds to run the consumer forums. The Centre, on the other hand, points out that 'consumer affairs' is a state subject. It gives grants, but the states neither use these properly nor supplement the grants with their own funds.

Besides poor infrastructure, the remuneration of judges and members is rather low to attract competent persons to work with commitment. As a result, there are about 156% vacancies for judges and members in Consumer Forums/Commissions.

In most cases, the chairman of the forums and commission approach consumer complaints with a legal mindset. Consequently, advocates dominate the proceedings at the forum and commission and complicate the issues with legal technicalities and procedures.

The consumer satisfaction level is low due to delays in deciding the cases and difficulties in implementation of the orders. In the present state of affairs, justice delayed and denied.

The Competition Commission of India

The CCI has so far decided few cases. Recently, in complaint of Park Place Resident's Welfare Association in Gurgaon against the DLF, the CCI found the DLF guilty of disregarding consumer rights and firming up one-sided sale agreements containing unfair clauses. The penalty was 7% of the average turnover of the company during the last three years. The CCI also directed the DLF to substantially amend its agreement and remove the unfair conditions imposed on the buyers of flats. The DLF appealed against this order and the same is pending before the Competition Appellate Tribunal.

Role of Professionals

Professionals in discharging their professional duties also serve the society. They, having sound knowledge of business laws, practices and procedure, are in an ideal position to protect the rights of consumers. First, they can take up the complaints of consumers before the Forums and Commissions. Second, during their interaction with manufacturers, supplier and users of goods and services, they can impress upon them that it is in the best interest of their business to provide

quality goods and services at fair price. The other important areas include:

- (i) undertaking consumer advocacy by impressing upon trade, industry and commerce that it is the consumer, who imparts value to the goods and services manufactured and sold by them (Annexure-1).
- (ii) persuading companies to provide value for the money spent by the consumer and putting in place prompt and effective grievance handling system to enhance consumer loyalty and satisfaction.
- (iii) emphasising companies to clearly and accurately display of contents and price of all goods and services to ensure transparency. The service providers must disclose all service charges and taxes separately so that consumer can know the real price and other charges. Such price comparison, coupled with ratings on quality parameters, would not only help consumers make an informed choice, but also increase competition among service providers; and
- (iv) interacting with government agencies and consumer associations to amplify the consumer rights by imparting education and training to consumers about their right and how to redress their grievances under the consumer protection laws and regulations.

Suggestions

Following suggestions deserve careful consideration for consumer protection:

1. The Government should improve the functioning of the consumer forums by enhancing financial assistance to the States and union territories for creation and augmentation of their infrastructure, including new buildings and provision of furniture, office equipment, etc. for better working of the forums. There is urgent need for adequate infrastructure, judges and staff to handle the complaints. For this, there should be a clearly defined formula to determine the requirements of funds for efficient working of forums and commissions and equal contribution between the Centre and the states. Moreover, the Centre can use the Consumer Welfare Funds, having ₹ 130 crore, for paying salaries to the members of forums and commissions.
2. Computerise all the forums throughout the country under the 'Computerisation and Computer Networking of Consumer Forums in the Country (CONFONET)' for better, transparent and easier

functioning to protect consumers from all forms of exploitation.

3. The Consumer Protection Act should achieve the intended object of a simple, yet powerful tool against unscrupulous elements, empower the masses by providing the speedy and simple redressal of consumer disputes. All consumer cases should be decided within 90 to 150 days and in case of delay, reasons should be recorded in the order.

Conclusion

Gone are the days of '*Caveat emptor* - let the buyer beware' when consumer was responsible for protecting his interest by prudently negotiating the deal. In the olden days, the products were less sophisticated and could be inspected and tested before purchase. With globalisation, international trade and commerce offers increasing number of new goods and services, involving high level of technology and sophistication, about which the consumer knows little. The modern goods and services have been posing great challenges to the consumers in identifying right quality of products and services to meet his requirement. Consequently, the scope for defrauding the innocent consumer is also on the rise.

There is a need to strengthen consumer protection laws, subjecting fraudulent and unfair practices to severe punishment. Moreover, individual consumers lack time and efforts to follow the legal remedies. As such, the role of government, professionals and NGOs become important. Professionals, with their training, excellence and professionalism, can play an important role in strengthening the consumer-corporate dynamics equilibrium. In their interaction with the corporate sector in professional capacity, they can make clear the difference between "profit as a yardstick of efficiency" and 'profiteering as tool of exploitation of consumers'.

Ray Krock has rightly remarked: "If you work just for money, you will never make it, but if you love what you are doing and you always put the consumer first, success will be yours". Above all, it is the social responsibility of the business to put the customer at the central stage in their policies and management system. There is need for a paradigm shift in marketing strategy. The real challenge for marketing and brands is how best to harness values at the heart of their business as marketing tools.

It is high time to protect the consumer and ensure quality product at fair price. The laws for protection of consumers' rights are stringent, but

their implementation is lacking. In India, what is really needed is effective implementation of laws and easy, economical, interactive and prompt grievance redressal system for the redressal of consumer grievances.

ANNEXURE-1

The Federation of Indian Chambers of Commerce and Industry in its paper has highlighted the following aspects:

Be a responsible consumer

Consumers share the responsibility for maintaining an ethical marketplace. When doing business with any organisation - be it a store, professional service, or a large corporation - today's consumers should strive to conduct their business, following some basic ethical practices in the following ways:

Education

Know your rights and responsibilities, comparison of shops, read contracts, and ask questions before you buy. Investigate offers that sound too good to be true.

Truthfulness

Don't return used goods under the pretence that they are damaged if they are not. This practice, as well as switching price tags and shoplifting (or failure to report shoplifters), costs all consumers in terms of time and money.

Honesty

Exhibit the same kind of honesty you expect to receive from business firms. If a sales clerk makes a mistake in your favor, point it out as quickly as you would a mistake in the company's favor.

Integrity

Live up to your obligations. Enter agreements in good faith, and pay your bills when they are due. If you can't, inform the merchant and explain why.

Courtesy

Recognise that store employees are individuals. Treat them as you wish to be treated.

Sensibility

Do not make unreasonable demands. Respect the firm's right to limit services and products offered. Do not expect to get something for nothing.

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Responsible Business

FACC Charter (Draft)

Member companies will recognise that this Code of Ethics is voluntary and will undertake their business in accordance with the principle of upholding consumer rights.

1. Establish a comprehensive customer service program and train the customer service staff accordingly.
2. Recognition to customer complaints as an opportunity to clear up a misunderstanding or identifying a real problem within the company.
3. Seek to treat each customer fairly, demonstrate sound business practices. Seek to resolve any dispute in a fair and expeditious manner. Inform the consumer of any health, environmental, safety or other hazards posed by the normal use of products or service.
4. Ensure that the company's advertising conveys correct information and says what it means and means what it says.
5. Help a potential customer make a more informed buying decision, by providing detailed information about the company, its product or service in writing - or with a contract.
6. Make truthful and accurate claims to the consumers and strive to be transparent about all aspects of the products or services offered.
7. Uphold the principle of fair trade and be cautious against any conduct which has the intent, capability, or effect of being deceptive towards the consumer. Make efforts to serve customers with honest values, avoiding all devices and schemes which prey on human ignorance or gullibility
8. All Organisations to have the following:
 - Consumer Charter
 - Telephone Helpline
 - Consumer Service Representative ■



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